

SENATE BILL 621

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P2

2004 Regular Session
4lr2528
CF 4lr1720

By: **Senators Klausmeier, Britt, Brochin, Conway, Currie, Della, Exum, Frosh, Garagiola, Giannetti, Gladden, Green, Grosfeld, Hollinger, Hughes, Jones, Lawlah, McFadden, Pinsky, Ruben, Stone, and Teitelbaum ~~Teitelbaum~~, and Kramer**

Introduced and read first time: February 6, 2004
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: April 3, 2004

CHAPTER _____

1 AN ACT concerning

2 **State Procurement Contracts - Living Wage**

3 FOR the purpose of requiring certain contractors and subcontractors to pay certain
4 employees a certain minimum wage level under certain State procurement
5 contracts; providing certain exemptions and reductions in a certain wage level;
6 requiring the Commissioner of Labor and Industry to prescribe a living wage
7 level based on a certain Consumer Price Index and to administer and enforce
8 requirements with regard to employees; requiring certain units of State
9 government to adopt regulations and authorizing certain units to grant certain
10 waivers; granting certain employees rights of free speech and association;
11 requiring covered employers to post certain information; authorizing an
12 employee to sue for certain ~~damages~~ wages under certain circumstances;
13 providing certain remedies and certain procedural requirements; prohibiting an
14 employer from retaliating against an employee based on a certain action;
15 providing for the application of this Act; establishing certain penalties; defining
16 certain terms; and generally relating to levels of wages paid to employees under
17 certain procurement contracts.

18 BY repealing and reenacting, without amendments,
19 Article - State Finance and Procurement
20 Section 11-101(x)
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2003 Supplement)

23 BY adding to

1 Article - State Finance and Procurement
 2 Section 12-101(c); and 18-101 through 18-110, inclusive, to be under the new
 3 title "Title 18. Living Wage"
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume and 2003 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - State Finance and Procurement**

9 11-101.

10 (x) (1) "Unit" means an officer or other entity that is in the Executive
 11 Branch of the State government and is authorized by law to enter into a procurement
 12 contract.

13 (2) "Unit" does not include:

14 (i) a bistrate, multistate, bicounty, or multicounty governmental
 15 agency; or

16 (ii) a special tax district, sanitary district, drainage district, soil
 17 conservation district, water supply district, or other political subdivision of the State.

18 12-101.

19 (C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND
 20 INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
 21 OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO
 22 THE PROVISIONS OF TITLE 18 OF THIS ARTICLE.

23 TITLE 18. LIVING WAGE.

24 18-101.

25 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

26 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

27 (C) "EMPLOYER" MEANS A ~~FOR-PROFIT ENTITY~~ CONTRACTOR OR
 28 SUBCONTRACTOR THAT:

29 (+) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
 30 MORE; ~~OR~~

31 (-) ~~HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR MORE~~
 32 ~~UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION.~~

1 (D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER §
2 18-103 OF THIS TITLE.

3 18-102.

4 (A) (1) THIS TITLE APPLIES TO ~~AN A FULL-TIME EMPLOYEE OF AN~~
5 EMPLOYER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE ~~IF AT LEAST~~
6 ~~ONE HALF OF THE EMPLOYEE'S TIME DURING ANY WORK WEEK RELATES TO A~~
7 ~~STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE~~
8 ~~CONTRACT.~~

9 (2) THIS TITLE DOES NOT APPLY TO AN EMPLOYEE OF AN EMPLOYER IF
10 THE EMPLOYEE:

11 (I) IS 17 YEARS OF AGE OR YOUNGER FOR THE DURATION OF A
12 CONTRACT SUBJECT TO THIS TITLE; OR

13 (II) WORKS LESS THAN 13 CONSECUTIVE WEEKS FOR THE
14 DURATION OF A CONTRACT SUBJECT TO THIS TITLE AND DURING THAT PERIOD
15 WORKS FULL-TIME.

16 (B) THIS TITLE DOES NOT APPLY TO A CONTRACT:

17 (1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR RESPOND TO
18 AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

19 (2) WITH A PUBLIC SERVICE COMPANY;

20 (3) WITH A NONPROFIT ORGANIZATION; OR

21 (4) WITH THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT.

22 (C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES THAT
23 APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE FEDERAL
24 PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE CONTRACT OR
25 PROGRAM.

26 18-103.

27 (A) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN
28 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
29 THIS TITLE AT LEAST \$10.50 PER HOUR.

30 (B) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL YEAR, THE
31 COMMISSIONER SHALL ADJUST THE WAGE RATE REQUIRED UNDER SUBSECTION (A)
32 OF THIS SECTION ANNUALLY BY THE ANNUAL AVERAGE INCREASE, IF ANY, IN THE
33 CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE
34 WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR
35 THE PREVIOUS CALENDAR YEAR.

1 (C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
2 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
3 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER TITLE
4 17, SUBTITLE 2 OF THIS ARTICLE OR THIS TITLE.

5 (D) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE HEALTH
6 INSURANCE TO AN EMPLOYEE, THE EMPLOYER MAY:

7 (1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE
8 EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH EMPLOYEE;
9 AND

10 (2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS SECTION
11 TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF THE HOURLY
12 COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH EMPLOYEE.

13 18-104.

14 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
15 EMPLOYERS SUBJECT TO THIS TITLE.

16 (B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP RECORDS
17 AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
18 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
19 ENFORCEMENT OF THIS TITLE.

20 18-105.

21 (A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE
22 SPEECH AND ASSOCIATION.

23 (B) ~~(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT~~
24 ~~BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS~~
25 ~~UNDER THIS TITLE IS VOID.~~

26 ~~(2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED~~
27 ~~THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.~~

28 18-106.

29 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS
30 ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS
31 TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK
32 SITE A NOTICE OF:

33 (1) THE LIVING WAGE RATE;

34 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

35 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
36 COMMISSIONER.

1 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
2 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
3 WORK SITE.

4 (C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE
5 COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL
6 PENALTY NOT EXCEEDING \$50 \$500 PER VIOLATION.

7 18-107.

8 (A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE COMMISSIONER
9 SHALL INVESTIGATE A COMPLAINT UNDER THE COMPLAINT IN ACCORDANCE WITH
10 THIS TITLE.

11 (B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE
12 UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE
13 EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

14 (C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE
15 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND
16 PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR
17 PURPOSES OF ENFORCING THIS TITLE.

18 (D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE
19 COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

20 (2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER SHALL
21 SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
22 INTERESTED PARTIES.

23 (3) THE NOTICE SHALL INCLUDE:

24 (I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION;
25 AND

26 (II) THE TIME AND PLACE OF THE HEARING.

27 (4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

28 (I) SUBPOENA WITNESSES;

29 (II) ADMINISTER OATHS; AND

30 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND
31 OTHER EVIDENCE.

32 (E) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, THE
33 COMMISSIONER SHALL:

34 (I) ISSUE A DETERMINATION; AND

1 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY
2 WITH A COPY OF THE DETERMINATION.

3 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
4 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
5 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.

6 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY
7 THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
8 COMMISSIONER'S DETERMINATION.

9 18-108.

10 IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A
11 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
12 EMPLOYER SHALL:

13 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

14 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH
15 EMPLOYEE WHO ~~IS~~ WAS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS
16 TITLE.

17 18-109.

18 (A) (1) IF AN EMPLOYEE ~~IS~~ WAS PAID LESS THAN THE WAGE RATE
19 REQUIRED UNDER THIS TITLE ~~OR IF AN EMPLOYER RETALIATES AGAINST THE~~
20 ~~EMPLOYEE SOLELY BECAUSE THE EMPLOYEE EXERCISED RIGHTS GRANTED UNDER~~
21 ~~THIS TITLE~~, THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER ~~TREBLE~~ THE AMOUNT
22 OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND
23 THE AMOUNT RECEIVED BY THE EMPLOYEE.

24 (2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS
25 REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM
26 FILING AN ACTION UNDER THIS SECTION.

27 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR
28 WAGES.

29 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE
30 SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

31 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE
32 PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS
33 TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

34 ~~(D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,~~
35 ~~THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES~~
36 ~~UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,~~
37 ~~INCLUDING REASONABLE ATTORNEY FEES.~~

1 18-110.

2 (A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE ~~SOLELY~~
3 BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.

4 (B) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS
5 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT
6 EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
8 effect October 1, 2004.